

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 13-20225

Hon. Lawrence P. Zatkoff

v.

JOSE GUTIERREZ-MARIN,

Defendant.

ORDER

This matter is before the Court on Defendant's Motion to Request Time Extension to Accept Petition for Appeal [dkt 14] and Motion for Leave to Appeal *In Forma Pauperis* and Appointment of Counsel [dkt 19]. For the following reasons, the Court grants Defendant's motions.

On August 8, 2013, Defendant pled guilty to Count One of the Indictment, Unlawful Re-entry under 8 U.S.C. § 1326(a), (b)(1). The judgment was entered on August 16, 2013. To appeal a sentence, a criminal defendant must file a notice of appeal in the district court within 14 days of entry of judgment. Fed. R. App. P. 4(b)(1)(A)(i). The district court has discretion to extend the time to file the notice "for a period not to exceed thirty days." Fed. R. App. P. 4(b)(4). In order to do so, the district court must make a "finding of excusable neglect or good cause." *Id.* Thus, under some circumstances, a defendant may have up to a maximum of forty days after the entry of judgment to file a notice of appeal.

Here, Defendant filed his notice of appeal on September 6, 2013. Thus, the Court must make a finding of excusable neglect or good cause in order for Defendant's appeal to proceed. After reviewing Defendant's motion, the Court finds excusable neglect or good cause exists and will accept Defendant's notice of appeal.

Next, Defendant requests to proceed *in forma pauperis* on appeal. Under 28 U.S.C. § 1915(a), "any court of the United States may authorize the commencement, prosecution or defense of any suit,

action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor.” If a motion to proceed without prepayment of fees is filed and accompanied by a facially-sufficient affidavit, the Court should grant the application. *See Gibson v. R.G. Smith Co.*, 915 F.2d 260, 261 (6th Cir. 1990) (citing *Phillips v. Carey*, 638 F.2d 207, 208 (10th Cir. 1981)). The Court finds Defendant’s financial affidavit facially sufficient; therefore, the Court grants Defendant’s request to proceed *in forma pauperis* on appeal.

Finally, Defendant requests appointment of counsel on appeal. For the reasons stated in Defendant’s motion, the Court will grant Defendant’s request for appointment of counsel on appeal.

Accordingly, IT IS HEREBY ORDERED that Defendant’s Motion to Request Time Extension to Accept Petition for Appeal [dkt 14] and Motion for Leave to Appeal *In Forma Pauperis* and Appointment of Counsel [dkt 19] are GRANTED.

IT IS SO ORDERED.

S/Lawrence P. Zatkoff
Hon. Lawrence P. Zatkoff
U.S. District Judge

Date: November 15, 2013